

ARKANSAS SUPREME COURT

No. 09-417

ISAAC RUSSELL
Appellant

v.

LARRY NORRIS
Appellee

Opinion Delivered June 4, 2009

PRO SE PETITIONS FOR
PRELIMINARY AND TEMPORARY
INJUNCTIONS AND MOTION TO
AMEND BRIEF [CIRCUIT COURT OF
CHICOT COUNTY, CV 2009-45, HON.
ROBERT BYNUM GIBSON, JR.,
JUDGE]

APPEAL DISMISSED; PETITIONS
AND MOTION MOOT.

PER CURIAM

Appellant Isaac Russell, an inmate incarcerated in the Arkansas Department of Correction (“ADC”), filed a petition for writ of habeas corpus in the circuit court of the county in which he is incarcerated. The circuit court denied the petition and appellant lodged an appeal of the order in this court. Appellant filed two petitions in which he requests that this court issue injunctions to prevent the appellee from filing a brief and to prevent the ADC from transferring appellant to another prison while the appeal is pending. During the time since the two petitions were filed, appellant filed his brief and has also filed a motion to amend the brief. The petitions and motion are moot because we dismiss the appeal.

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

Here, it is clear that appellant cannot prevail because his petition failed to state grounds upon which the writ could issue.

In his petition, appellant asserted two claims as bases for the writ. In both claims, he alleged that there was not probable cause for his arrest and that the resulting invalid arrest resulted in a loss of jurisdiction or the facial invalidity of the commitment.

Appellant raised similar claims in a previous habeas petition. *Russell v. State*, CR 07-601 (Ark. Nov. 1, 2007) (per curiam). The law-of-the-case doctrine prevents an issue that was raised in a prior appellate proceeding from being raised in a subsequent appellate proceeding unless the evidence materially varies between the two. *Strom v. State*, 348 Ark. 610, 74 S.W.3d 233 (2002). Appellant's issues in this petition vary somewhat from those raised previously, but he nevertheless continues to challenge the judgment on the basis that his arrest was invalid.

As we noted in our prior opinion, issues concerning the sufficiency of the warrant and information are the type of factual issues that should be addressed at trial or on direct appeal and not in a habeas proceeding. See *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam); *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000) (per curiam). An illegal arrest, without more, has never been viewed as an absolute argument against a valid conviction. *Biggers v. State*, 317 Ark. 414, 878 S.W.2d 717 (1994).

Because appellant failed to state any cognizable claim in his petition, we dismiss the appeal. The petitions and the motion to amend the brief are therefore moot.

Appeal dismissed; petitions and motion moot.